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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,258	11/20/2001	Kent Wilcoxson Jordan	12918US02	9569
23446	7590	01/14/2004	EXAMINER	
MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661			SAGER, MARK ALAN	
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/989,258

Applicant(s)

JORDAN ET AL.

Examiner

M. A. Sager

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2002 and 10 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 16-19 is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4,5</u> | 6) <input type="checkbox"/> Other: |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Regarding claim construction and interpretation, the claimed scoring database (clm 1) includes a memory table where scoring includes to gain point(s) in a competitive event; transmitting a play prediction (clm 1) or receiving a next play prediction (clm 3) includes wired or wireless signal from input device or through communication bus; the determining an actual play outcome (clm 1, 3) includes human assessment of live play. Further, transmitting an actual play outcome includes communication from broadcast such as radio, television or other network or sending signal indicating play number, and transmitting auxiliary information includes degree of difficulty of play outcome or promotion/advertising. Also, defensive play outcome includes yardage, sack, fumble or incomplete pass at least due to defensive team effort.

2. Claim 1-7, 9, 13-14 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fascenda (4592546).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claim 8, 10-12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fascenda in view of Everton (414548) or Morstain (4496148). Fascenda discloses a game playable by remote participants in conjunction with a live event teaching claimed steps except 'yardage prediction and a scoring prediction' (clm 8), 'correct yardage prediction' (clm 10), 'correct scoring prediction' (clm 11), 'defensive play outcome' (clm 12). However, such scoring process is well known in the sport play prediction art. Everton (1:35-2:38, 3:5-13, 28-46, 3:65-4:25, 13:13-34, fig. 1-3, refs. 223, 226, 228, 216, 218, 222) and Morstain (2:38-3:68, 4:29-55, 9:26-57, fig. 1-3, 7, refs. 33, 34, 30, 42, 46, 54) each disclose game apparatus for use in conjunction with viewing of a spectator's sport teaching scoring for at least one of a yardage prediction and a scoring prediction, correct yardage prediction, correct scoring prediction, and defensive play outcome to permit a remote viewer to predict more types of sport actions so as to increase the variety of selections and to increase interest in game thereby due to increased interaction. Everton also states the simple scoring system may be made more complex so as to consider amount of gain or loss, touchdowns, first downs (13:28-34). Therefore, it would have been obvious to an artisan of gaming or sport play prediction at a time prior to the invention to add at least one of a yardage prediction and a scoring prediction, correct yardage prediction, correct

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scoring prediction, and defensive play outcome as taught by either Everton or Morstain to Fascenda's game so as to increase the variety of selections and to increase interest in game thereby due to increased interaction.

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fascenda in view of Vaughn (5643088) or Inselberg (6434398). Fascenda discloses a game playable by remote participants in conjunction with a live event teaching claimed steps except transmitting text information. Vaughn and Inselberg each disclose systems for remote participation of an event teaching transmitting text information such as promotion or advertising. However, transmitting text information in a skill game was well known prior to invention for communicating questions or advertisements. Vaughn (2:28-31, 2:62-3:10) and Inselberg (3:44-67, 4:33-45) disclose game apparatus for player participation in conjunction with an event teaching transmitting text information to communicate a message, question or advertisements to players of game. Therefore, it would have been obvious to an artisan at a time prior to invention to add transmitting text information as taught by Vaughn or Inselberg to Fascenda's game to communicate queries or ads or messages to players.

Allowable Subject Matter

7. Claim 16-19 is allowed.

8. The following is a statement of reasons for the indication of allowable subject matter: a game server adapted to determine a play stopped state and receive a next play prediction during a submit prediction mode over a communication network and a remote terminal adapted to submit said next play prediction to game server, the remote terminal responsive to actual play outcome representation to update a participant score based on the actual play outcome and next play

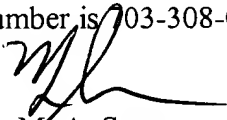
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prediction appears allowable over art at least due to art appears to conduct scoring at remote terminal but does not teach/suggest such in conjunction with sending play prediction to a server.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. A. Sager whose telephone number is 703-308-0785. The examiner can normally be reached on T-F, 0700-1700 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



M. A. Sager
Primary Examiner
Art Unit 3714

MAS
January 12, 2004